IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 373 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CENTRAL BUREAU OF INVESTIGATION

Versus

GOVINDBHAI MANHARDAS PATEL

Appearance:

1. Criminal Revision Application No. 373 of 1999

MR SAMIR J DAVE for Petitioner No. 1

MR BN KESHWANI for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 17/06/2004

CAV JUDGEMENT

1. By invoking jurisdiction of this Court under Sec.397 R/w Sec.401 of CrPC, the petitioner Central Bureau of Investigation (hereinafter referred to as CBI)

-original complainant has challenged the legality, validity and propriety of the order passed by ld. City Civil & Sessions Judge, (Spl.Judge), Court No.3, Ahmedabad (hereinafter referred to as the ld. Spl.Judge) on 30.4.1999 below application exh.34 in Spl.Case No.15/1991. Respondent- original accused no.1 of Spl.Case No.15/1991 was chargesheeted on 29.4.1991 for the offences punishable under section 120-B of Indian Penal Code and Sections 7, 13(2) R/w Sec.13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as the PC Act), pursuant to the investigation of FIR No. RC-44/1990 for the alleged acceptance of illegal gratification of Rs.200/ from the complainant -a subscriber to reconnect his disconnected phone that was put out of order on account of non-payment of bill. Ld. Spl.Judge, after filing of the chargesheet, framed charge against the respondent accused on 23.9.1993. CBI submitted documents in the Court when the case was to be listed for trial i.e. on or about 22.7.1997. Since the date of framing of charge i.e. 23.9.1993 the actual trial could not begun, respondent accused submitted an application exh.34 on 23.11.1998 to close the evidence of prosecution pending against him. The respondent in para-5 of the said application exh.34, referred decision of the Apex Court in the case of Raj Deo Sharma v/s State of Bihar, Judgment Today 1998(7) SC P.1 and submitted that it is obligatory on the part of the Court to close prosecution evidence on completion of the period of 2 years from the date of recording of the plea of the accused or the charge framed when the trial is for the offence punishable with imprisonment for a period not exceeding Seven Years. It was the grievance of the respondent accused that the period of more than 2 years i.e. more than 5 years, had lapsed from the date of framing of the charge and recording of the plea of the accused and, therefore, the evidence of the prosecution be closed and he may be acquitted from the charges levelled against him. Ld. Spl.Judge, after hearing the parties, allowed the application and decided to close the evidence of prosecution and posted the case to the next immediate stage of the trial. It is relevant to note that till the date, no formal evidence was led by the prosecution. It seems that application was submitted on 23.11.1998 and the order under challenge has been passed on 30.4.1999. So, it can be inferred legitimately that no attempts were made by either parties or by the ld. Judge to see that recording of evidence begins. The proceedings drawn in respect of this in-between period show that matter was kept for hearing of application exh.34. This could have been for both i.e. hearing of application Exh.34 and recording of evidence as well.

2. Mr Samir Dave, ld. Counsel appearing for the petitioner CBI has taken me through relevant aspects of the matter and number of days on which the Court could not take-up the case for hearing and Presiding Judge of the Court concerned was busy on those days. According to Mr. Dave, Sessions Court or Spl.Judges conducting corruption cases are normally taking up trials mainly during vacations where the accused persons are enjoying bail pending trial. Only undertrial prisoners are given preference in conducting the trial considering the burden of work with the Presiding Judge concerned. However, some attempts were made to see that trial is conducted and ld. PP appearing for SBI had prayed for time; on some occasions in the year 1997, only twice in the year 1998 and once in the month of January 1999 when application exh.34 was pending for hearing. So, according to ld. counsel Mr. Dave, ld. Presiding Judge has erred in observing, in directly, that because of prosecution side, the accused has remained under constant mental stress and hanging sword of the outcome of the trial and there was no fault on his side. It is true that the case was posted for evidence firstly on 3.12.1993. On one occasion i.e. on 15.7.1994, staff of City Civil Court was on strike. On some occasions, Presiding Judge was on leave and on some days, it is recorded in the proceedings that the Court was busy. Most of the adjournments are casual, but on this ground only, ld. Spl.Judge ought not to have closed the evidence of the complainant CBI. The backbone of the arguments of Mr. Dave is that subsequent decisions of the Apex Court would have an important bearing and in view of the observations made by the Apex Court keeping in view the finding of the Apex Court in the case of A.R. Antulay v/s R.S.Nayak, reported in AIR 1992(2) SC 1701, the order under challenge can not sustain. Mr. Dave has taken me through certain observations made by the Apex Court in the following cases:-

(i) Common Cause, A Regd. Society v/s Union of India (I), 1997(2) GLR 1297 (SC),
(ii) Common Cause, A Regd. Society v/s Union of India (II), 1997(2) GLR 1302 (SC),
(iii) Raj Deo Sharma v/s State of Bihar (I), 1999(1) GLR 709 (SC),
(iv) Raj Deo Sharma v/s State of Bihar (II), 2000(1) GLR 605 (SC),
(v) P. Ramchandra Rao v/s State of Karnataka, 2002(2) GLR 1549 (SC),

According to Mr. Dave, in the decision of this

case in one another case i.e. in Cri. Revision Application No. 252/1999 in the case of CBI v/s Dahyabhai D. Dabhi, reported in 2003(3) GLR 2152, similar types of contentions were raised as the findings recorded by ld. Spl.Judge were brought before this Court under scrutiny by challenging the legality and validity of the findings recorded and this Court, after referring all relevant decisions including the decision referred to in the application exh.34, in para-11, has observed as under:-

"11. Therefore, it can be gathered that the guidelines as to the action which could be taken in accordance with the provisions made in Secs.309, 311 and 258 of the Code referred in A.R. Antulay's case (supra) do not appear to have been disturbed by the Hon'ble Supreme Court in the aforesaid last decision. A suggestion was also made in A.R. Antulay's case (supra) in guideline No.5 that appropriate help can also be taken by resorting to the provisions of Sec.482 of the Code as well as under Arts. 226 and 227 of the Constitution of India for appropriate writ for suitable direction."

3. Mr. BN Keshwani, ld. counsel appearing for the respondent accused has produced certified copy of the Rojnama of Spl.Case No.15/1991 and with a view to assist the Court, Mr. Keshwani has also prepared a chart of dates on which case was proceeded for hearing and on perusal of the said chart, it indicates that there were 24 adjournments prior to the date of framing of the charge and on 48 occasions, hearing was adjourned on account of adjournments prayed for by ld. PP appearing for CBI or for non-availability of the Presiding Judge or because of paucity of time and cause-list on that particular day or on account of adjournment prayed by the accused side. It is true that on most of the dates, accused had appeared before the Court and he was not a party for adjournments on most of the occasions. In the case of Dahyabhai D.Dabhi (supra), this Court had noted that hearing was adjourned after framing of the charge on number of occasions and on 23 occasions, adjournments were due to requests made by ld. PP and on 21 occasions, matter was adjourned by the Court for the reasons recorded in the Rojnama. So, according to ld. counsel Mr. Dave, ratio of the decision in the case of Dahyabhai Dabhi (supra) would squarely apply to the facts of the present case. So, this Court adopting the reasons and ratio laid down in the case of Dahyabhai Dabhi (supra), should allow this Cri. Rev. Application with

appropriate directions to the trial Court. It is argued by ld. counsel Mr. Dave that observations of the Apex Court in the case of State of Uttar Pradesh v/s Shambhu Nath Singh, 2002(2) GLR 1093 (SC), would not help the present petitioner because it is not the say of the present petitioner that the case of the prosecution be re-opened. Finding recorded by ld. Presiding Judge while disposing of the application exh.34, has specifically observed that only the evidence has been closed and the case was treated as pending and the same was adjourned on the next date. Accused was not ordered to be acquitted on the day on which finding was recorded below application exh.34, otherwise CBI could have challenged the acquittal recorded by the ld. Spl.Judge. In support of this submission, Mr. Dave has referred discussion made in paras 25 & 26 of the decision of this Court in the case of Dahyabhai Dabhi (supra). So, according to Mr. Dave, Revision Application may be allowed with appropriate directions and the complainant CBI may be permitted to lead evidence and Spl.Judge should be directed to dispose of the case on its own merits.

4. According to ld. counsel Mr. Keshwani, respondent has never expressed grievance against the prosecution and ld. PP, but when it is clear and apparent from "Rojnama" that on most of the occasions, the prosecution had failed in keeping the witnesses present and it took several months even in producing the list of documents, the finding recorded by the ld. Spl.Judge can not be said to be either perverse or illegal. The date of the decision under challenge should be looked into and on that day, the ld. Spl.Judge was right in recording the finding and accepting the ratio of the decision in the case of Raj Deo Sharma (supra). According to Mr. Keshwani, the order under challenge is well-reasoned and prudent order wherein the ld. Spl. Judge has observed that there can not be any fixed time limit for concluding the trial and while appreciating the say of the accused in the background of the right flowing from Article 21 of the Constitution of India, the ld. Judge is supposed to look overall facts and circumstances and in the present case, the ld. Spl.Judge, after discussing all the relevant aspects, has reached to a conclusion that the application exh.34 requires to be allowed and the application has been partly allowed. The accused is not declared acquitted. However, the effect would be of acquittal. The decision in the case of Raj Deo Sharma (supra) has not been even impliedly overruled by the subsequent decisions of the Apex Court including the decision in the case of P.Ramchandra Rao (supra).

Even the prosecution had not cared to file reply to the application exh.34. One of the accused namely Hitendra Vanechand was ordered to be discharged by the trial Court vide order dated 19.4.1993 and even thereafter the Court was not able to conduct and conclude the trial for a reasonable period of time. The list of documents was produced by the ld. PP for the first time on 22.7.1997. On 6.8.1997, first witness who was to be examined was present, but on that day, the accused had prayed for time and it is recorded that the accused was asked to pay costs of Rs.300/. So, on one hand, according to Mr. Keshwani, the Court was anxious to conduct the trial in August 1997 but as the same had not begun for a very very long time, the accused preferred application exh.34 and the finding recorded by the ld. Spl.Judge should be appreciated in the light of the facts emerging from record which clearly indicate that this is a case of sheer negligence on the part of the prosecution though the accused had remained cooperative. The view of the Courts should be different in either ACB cases or in the cases of economic offences, is not the ratio of the decisions of the Apex Court. The facts of each case should be looked into when an application is preferred in light of Article 21 of the Constitution of India and/or under Sec.309 of CrPC. Mr. Keshwani has taken me through relevant paras 17, 31, 32 and 33 of the decision in the case of P. Ramchandra Rao (Supra).

5. The other fold of the arguments of Mr. Keshwani is that the observations made by the Apex Court in the case of Duli Chand v/s Delhi Administration, reported in AIR 1975 SC 1960, has great relevance in the set of the facts of the present case. It is submitted that jurisdiction of the High Court while dealing with Cri. Revision Application is severely restricted and it can not embark upon a re-appreciation of evidence. When, ld. Spl.Judge, after appreciating the facts emerging from Rojkam has recorded a finding that application exh.34 deserves to be allowed, then this finding can be said to be a finding of fact and on plain reading of Rojnama and the finding recorded by the ld. Spl.Judge, it appears that it is based on correct appreciation of the fact and the same has sound reasons, in that event, this Court has no jurisdiction to reappreciate such a finding of fact. But ratio of this decision would not help the present petitioner. The Apex Court was dealing with the petitioner under Article 136 of the Constitution of India and was dealing with a case where the ld. Magistrate and the ld. Addl. Sessions Judge had arrived at same conclusions and concurrent findings of facts were brought before the High Court for scrutiny by way of a revision

application and Delhi High Court upheld the finding recorded by both the Courts below. The appellant before the Apex Court was held guilty of the offence punishable under Sec.304-A of Indian Penal Code. Ld. Magistrate has imposed imprisonment for 18 months, but it was reduced by the ld. Addl. Sessions Judge to 6 months. The order of confirmation of conviction was challenged by way of Revision Application before the High Court. Failure on the part of the Revisioner before the High Court had given rise to a petition under Article 136 of the Constitution of India. So, the observations made by the Apex Court would not help the respondent accused because the say of the present petitioner is that the finding recorded by the ld. Spl.Judge is erroneous and should be held erroneous in view of the subsequent decisions of the Apex Court and decision of this court in the case of Dahyabhai Dabhi (supra). Unless this Bench is of the view that it is not in agreement with the decision given by the other Bench of this Court in the case of Dahyabhai Dabhi (supra), that decision shall have a binding force. Of course, Mr. Keshwani has submitted that the decision in the case of Raj Deo Sharma (II) (supra) has not been overruled and ld. Single Judge while dealing with the decision in the case of Dahyabhai Dabhi (supra) has erred in not appreciating the decision of the Apex Court in the case of Raj Deo Sharma (supra) correctly, then a different finding can be recorded by this Court, but the Court is not in agreement with this submission of ld. counsel Mr. Keshwani. It is true that in most of the decisions dealing with the revision applications preferred, it is held that unless a finding is thoroughly perverse and against the weight of evidence, it should not be disturbed. Legal error is a ground under which the finding of the lower Court can be disturbed in exercise of revisional powers. In the present case, the Court has not been approached after recording of evidence or at the conclusion of the trial. The legality and propriety of the order passed below application exh.34 is challenged. In the present case, this Court is not asked to appreciate the factual finding recorded by the ld. Spl.Judge, but it is submitted by the petitioner CBI that ld. Spl.Judge ought not to have closed the evidence in light of the nature and gravity of the offence and other relevant facts circumstances and the Court is in agreement with the submissions advanced by ld. counsel Mr. Samir Dave that the ratio of the decision of this Court in Cri. Rev. Application No.546/1997 dated 15.1.2003 (Coram: H.H.Mehta, J), would not help the respondent accused. In this decision, the original accused was facing prosecution of the offences punishable under the provisions of the Essential

Commodities Act, 1955 and this Court while dealing with the case, has discussed the decision in the case of Dahyabhai Dabhi (supra). It is true that powers of a Judge or a Magistrate to close the evidence have not been taken away by any of the decisions of the Apex Court. In the case of P. Ramchandra Rao (supra), it is held that it is not the function of the Court to lay down law of limitation for a closure of the evidence and such a law can not be applied uniformally without having regard to the facts and circumstances of each particular case. In the present case, it was the duty of the prosecution to keep the witnesses present and also to see that an application for issuance of summons is presented well in time, but failure on the part of ld. PP whether can prejudice the cause of the State and the people, is the question. Ld. Spl.Judge himself could have issued either summons or warrant especially when on one occasion witness was present and adjournment to accused was granted directing him to pay costs. On one hand, the Court is not issuing summons or warrant to such witness or witnesses and on the other hand, the Court decides to close evidence of the prosecution, are two contradictory facts situation that emerges from record of the present case. It is rightly argued by Mr. Dave that there are about 250 to 300 cases of CBI pending before the trial Court and there are only two Judges who are required to deal with those cases. This very Presiding Officers are also entrusted with other judicial work.So, finding recorded by ld.Spl.Judge can be said to be highly prejudicial to the prosecution. I would like to quote paras 27 & 28 of the decision in the case of Dahyabhai D.Dabhi (supra) which are relevant :-

"27. If this approach, as adopted by the trial Court, is accepted as a principle, then even the cases of murder under Section 302 of the Indian Penal Code, the cases of robbery and dacoity, the cases of TADA and many other cases of serious nature can also follow the said principle and the Court may go on closing the evidence of the prosecution if witnesses are not kept present and applications for witness summons are not submitted by the prosecution for a long time.

28. The people have still faith and trust in judiciary. But if three is a delay in disposal of the cases and if the evidence of the parties is closed very regularly and frequently then the said trust is likely to be shaken an therefore with a view to preserve the trust, faith and confidence in judiciary, it would be necessary to see that the cases are disposed of on merits

according to law and preferably by permitting the parties to lead evidence."

6. The above finding has been recorded for the reason that ld. Presiding Judge has failed in appreciating one fact that decision of Raj Deo Sharma-I & II are supplementary in nature and, therefore, those cases would also not be applicable to the facts of the case on hand. When the Court is not in agreement with the submissions made by Mr. Keshwani that the observations made by the Apex Court in the case of P.R. Rao (supra) makes the finding legal, Revision Application obviously should succeed.

7. For the reasons aforesaid, Cri. Revision Application is allowed. The impugned order passed by ld. City Civil & Sessions Judge, (Spl.Judge), Court No.3, Ahmedabad on 30.4.1999 below application exh.34 in Spl.Case No.15/1991 is hereby quashed and set aside and the matter is sent back to the trial Court for hearing and final disposal thereof afresh. However, it would be appropriate to direct the trial Court to fix and dispose of the trial against the accused at the earliest and preferably within Six Months from the date of receipt of writ of this Court. While calculating this period of Six Months, the time period spent on account of adjournments prayed for by the accused or non-availablility of the Presiding Judge for any other reason shall be excluded. ld. Trial Judge is also directed to fix the date of first hearing within 30 days of the receipt of writ of this Court and following further directions are issued :-

(i) In the meantime, the concerned Public Prosecutor will take a stock of the matter as to the number of witnesses whose presence could be procured on issue of witness summons. The concerned Public Prosecutor will also ascertain if witnesses are available at the address on records or if they have changed their address. The concerned Public Prosecutor shall also submit application for witness summons, if and when required, well in advance.

(ii) The office shall place a copy of this order before the Hon'ble Administrative Judge of the High Court, in charge of the City Civil and Sessions Court to consider desirability of establishing some Fast Track Courts for exclusively dealing with CBI cases if the pendency of such cases is very high as stated by Mr. Shah, learned Central Government Standing Counsel in the cognate Criminal Revision

Application.

(iii) The petitioner CBI shall consider the appointment of a ld. Public Prosecutor who is going to appear in the case against the present petitioner and he should be made personally responsible to see that trial is conducted on regular basis and he makes himself available for continuation of trial and no adjournment on flimsy grounds be prayed.

(iv) The trial Court will also consider desirability of taking up these cases even on First-Third and Fifth Saturdays on which offices of City Civil & Sessions Court do function. All other Courts and other offices in the State do function on those Saturdays. This would provide 2 to 3 additional working days to the Court, to the Public Prosecutor and to the defence lawyers.

(v) The said officer of the CBI will also make an arrangement for keeping a watch on the day to day conduct of trial of this case. It may be open to him to entrust this function to his subordinate.

(vi) The concerned Public Prosecutor will also ascertain, in the meantime, that all the relevant documents are on hand and copies are supplied to the defence before commencement of recording of evidence of prosecution witnesses. This vigilance will reduce delay in disposal of the cases.

(vii) The trial Court, in order to prosecute the attendance of witnesses, while issuing witness summons, will naturally apply it's mind to the power, function and duty under Sec.64 to 70 of the Code of Criminal Procedure, if any when necessary.

(viii) During the course of trial, the trial Court will naturally take into account the provisions made in Sec.311 of the Code.

(ix) The petitioner CBI is directed to deposit Rs.5,000/ as costs in Spl.Case No.15/1991 within Two Months before the trial Court and on such deposit, it shall be paid over to the accused person. It would be open to CBI to consider and decide as to who was responsible for not taking adequate steps to keep the witnesses present before the trial Court and for not applying for witness summons and to recover the amount of costs from such erring person.

Rule is made absolute subject to the aforesaid observations and directions.

[C.K. BUCH, J]

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